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# HOUSE BILL No. 1524

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-6-2-1.7; IC 32-28.

**Synopsis:** Mechanic's liens. Establishes the Indiana mechanic's lien recovery fund. Provides that a subcontractor and supplier who contribute to the fund shall be reimbursed from the fund if the subcontractor or supplier is not compensated for work done on an owner occupied residence. Requires the attorney general to administer the fund and initiate legal actions to recoup amounts paid from the fund and civil penalties.

**Effective:** July 1, 2003.

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**Kuzman**

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January 16, 2003, read first time and referred to Committee on Financial Institutions.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1524

A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 4-6-2-1.7 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2003]: **Sec. 1.7. (a) The attorney general may appoint and employ**  
4 **special deputy attorneys general to do the following regarding the**  
5 **Indiana mechanic's lien recovery fund under IC 32-28-3.5:**

6           **(1) Adopt rules for payment of claims from the fund.**

7           **(2) Assign a unique identifying number to each original**  
8 **contractor (as defined in IC 32-28-3.5-2) and secondary**  
9 **contractor (as defined in IC 32-28-3.5-4) who makes a**  
10 **voluntary contribution to the fund under IC 32-28-3.5-6(c).**

11           **(3) Develop a system to record participants in the fund.**

12           **(4) Initiate and prosecute civil actions to impose civil penalties**  
13 **and recoup money paid from the fund.**

14           **(5) Develop an application for use in making a voluntary**  
15 **contribution to the fund.**

16           **(6) Establish a procedure for payment of claims from the fund**  
17 **if a judgment is not obtained against a nonpaying party**



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because the nonpaying party has filed for bankruptcy protection.

(b) A person who is a defendant in an action under subsection (a)(4) is liable for:

(1) the amount of money paid from the fund to a secondary contractor; and

(2) a civil penalty of not more than ten thousand dollars (\$10,000) for each owner occupied residence.

The attorney general shall deposit amounts recovered under this subsection in the Indiana mechanic's lien recovery fund.

(c) The attorney general shall notify a secondary contractor in writing if there is insufficient money in the fund to pay a judgment or amount sought under subsection (a)(6).

SECTION 2. IC 32-28-3-6, AS ADDED BY P.L.2-2002, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) A person may enforce a lien by filing a complaint in the circuit or superior court of the county where the real estate or property that is the subject of the lien is situated. **A secondary contractor (as defined in IC 32-28-3.5-4) who files a complaint must indicate in the complaint whether the secondary contractor is a participant in the Indiana mechanic's lien recovery fund under IC 32-28-3.5.** The complaint must be filed not later than one (1) year after:

(1) the date the statement and notice of intention to hold a lien was recorded under section 3 of this chapter; or

(2) subject to subsection (c), the expiration of the credit, if a credit is given.

(b) Except as provided in subsection (c), if a lien is not enforced within the time set forth in subsection (a), the lien is void.

(c) A credit does not extend the time for filing an action to enforce the lien under subsection (a)(2) unless:

(1) the terms of the credit are in writing;

(2) the credit was executed by:

(A) the lienholder; and

(B) all owners of record; and

(3) the credit was recorded:

(A) in the same manner as the original statement and notice of intention to hold a lien; and

(B) not later than one (1) year after the date the statement and notice of intention to hold a lien was recorded.

(d) If the lien is foreclosed under this chapter, the court rendering judgment shall order a sale to be made of the property subject to the

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lien **unless the amount necessary to satisfy a lien on an owner occupied residence (as defined in IC 32-28-3.5-3) is recoverable from the Indiana mechanic's lien recovery fund under IC 32-28-3.5.** The officers making the sale shall sell the property without any relief from valuation or appraisal laws.

SECTION 3. IC 32-28-3-7, AS ADDED BY P.L.2-2002, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) A person whose lien is recorded under this chapter may be a party to an action to enforce a lien.

(b) **The court may not order the sale of an owner occupied residence (as defined in IC 32-28-3.5-3) under subsection (c) if satisfaction of all liens and costs can be achieved by remuneration from the Indiana mechanic's lien recovery fund.**

(c) The court may, by judgment, direct a sale of the land and building for the satisfaction of the liens and costs. The sale shall not prejudice the rights of:

- (1) a prior encumbrance; or
- (2) an owner or other person who is not a party to the action.

~~(c)~~ (d) If several actions are brought by different claimants and are pending at the same time, the court may order the actions to be consolidated.

SECTION 4. IC 32-28-3-9, AS ADDED BY P.L.2-2002, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) This section applies to a:

- (1) subcontractor;
- (2) lessor leasing construction and other equipment and tools, regardless of whether an operator is also provided by the lessor;
- (3) journeyman; or
- (4) laborer;

employed or leasing any equipment or tools used by the lessee in erecting, altering, repairing, or removing any house, mill, manufactory or other building, or bridge, reservoir, system of waterworks, or other structure or earth moving, or in furnishing any material or machinery for these activities.

(b) Except as provided in section 12 of this chapter, in order to acquire and hold a lien, a person described in subsection (a) must give to the property owner, or if the property owner is absent, to the property owner's agent, written notice particularly setting forth the amount of the person's claim and services rendered for which:

- (1) the person's employer or lessee is indebted to the person; and
- (2) the person holds the property owner responsible.

(c) Subject to subsections (d) and (e) **and IC 32-28-3.5**, the property

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owner is liable for the person's claim.

(d) The property owner is liable to a person described in subsection (a) for not more than the amount that is due and may later become due from the owner to the employer or lessee.

(e) A person described in subsection (a) may recover the amount of the person's claim if, after the amounts of other claims that have priority are subtracted from the amount due from the property owner to the employer or lessee, the remainder of the amount due from the property owner to the employer or lessee is sufficient to pay the amount of the person's claim.

(f) This section applies to a person described in subsection (a) who gives written notice, to the property owner or, if the property owner is absent, to the owner's agent, before labor is performed or materials or machinery is furnished. The notice must particularly set forth the amount of:

(1) labor the person has contracted to perform; or

(2) materials or machinery the person has contracted to furnish; for the employer or lessee in erecting, altering, repairing, or removing any of the buildings or other structures described in subsection (a). A person described in subsection (a) has the same rights and remedies against the property owner for the amount of the labor performed by the person or materials or machinery furnished by the person after the notice is given, as are provided in this chapter for persons who serve notice after performing the labor or furnishing the materials or machinery.

(g) If an action is brought against a property owner under this section, all subcontractors, equipment lessors leasing equipment, journeymen, and laborers who have:

(1) performed labor or furnished materials or machinery; and

(2) given notice under this section;

may become parties to the action. If, upon final judgment against the property owner the amount recovered and collected is not sufficient to pay the claimants in full, the amount recovered and collected shall be divided among the claimants pro rata.

SECTION 5. IC 32-28-3.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

**Chapter 3.5. Indiana Mechanic's Lien Recovery Fund**

**Sec. 1. As used in this chapter, "homeowner" means the owner of an owner occupied residence.**

**Sec. 2. As used in this chapter, "original contractor" means a general contractor, factory built housing retailer, or real estate**

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1 developer.

2 Sec. 3. As used in this chapter, "owner occupied residence"  
3 means a residence that is, or after completion of construction will  
4 be, occupied by the homeowner or the homeowner's tenant or  
5 lessee. The term includes curtilage and any outbuilding on the  
6 property.

7 Sec. 4. As used in this chapter, "secondary contractor" means  
8 a subcontractor or other person who provides labor or furnishes  
9 materials or machinery, including the leasing of equipment or  
10 tools.

11 Sec. 5. This chapter applies only when:

- 12 (1) a homeowner and an original contractor enter into a
- 13 written contract for the construction or purchase of an owner
- 14 occupied residence;
- 15 (2) the homeowner pays the original contractor in full under
- 16 the terms of the written contract; and
- 17 (3) the homeowner or the homeowner's tenant or lessee
- 18 occupies the owner occupied residence as a primary or
- 19 secondary residence not later than one hundred and eighty
- 20 days (180) after the date of completion of construction.

21 Sec. 6. (a) The Indiana mechanic's lien recovery fund is  
22 established to provide payment to a secondary contractor who:

- 23 (1) enters into a separate contract to fulfill the terms of a
- 24 written contract described in section 5(1) of this chapter; and
- 25 (2) does not receive payment for performance under the
- 26 separate contract.

27 (b) The fund shall be administered by the attorney general.

28 (c) The fund is comprised of:

- 29 (1) one (1) time voluntary contributions of one hundred
- 30 ninety-five dollars (\$195) made by original contractors and
- 31 secondary contractors; and
- 32 (2) amounts recovered as judgments and civil penalties by the
- 33 attorney general under IC 4-6-2-1.7.

34 (d) The expenses of administering the fund shall be paid from  
35 the money in the fund.

36 (e) The treasurer of state shall invest the money in the fund not  
37 currently needed to meet the obligations of the fund in the same  
38 manner as other public money may be invested. Interest that  
39 accrues from the investments shall be deposited in the fund.

40 (f) Money in the fund is continuously appropriated for the  
41 purposes stated in subsection (a).

42 Sec. 7. An original contractor who receives a unique identifying

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number from the attorney general shall prominently place the number on each building permit that the original contractor receives.

**Sec. 8.** An original contractor shall provide a homeowner with written notice before beginning a project described in section 5(1) of this chapter. The notice must include language stating that the homeowner is not liable for amounts sought under a mechanic's lien filed by a secondary contractor who performs labor or provides materials or machinery, including the leasing of equipment or tools, on an owner occupied residence if the:

(1) secondary contractor has made a voluntary contribution to the Indiana mechanic's lien recovery fund under section 6(c) of this chapter; and

(2) Indiana mechanic's lien recovery fund is solvent, as determined by the attorney general.

**Sec. 9. (a)** Except as otherwise provided in this chapter, a secondary contractor who seeks payment from the fund is required to obtain and enforce a mechanic's lien as provided under IC 32-28-3.

(b) A secondary contractor who obtains a judgment in a proceeding under IC 32-28-3 shall submit a certified copy of the judgment and any other documentation required under IC 4-6-2-1.7(a) to the attorney general for payment if the secondary contractor:

(1) enters into a separate contract to fulfill the terms of a written contract described in section 5(1) of this chapter;

(2) does not receive full payment for performance under the separate contract; and

(3) has made a voluntary contribution to the fund under section 6(c) of this chapter before performing under the separate contract.

A secondary contractor must submit a certified copy of the judgment and other necessary documentation to the attorney general not later than one (1) year from the date the judgment is obtained to collect from the fund.

(c) A secondary contractor who has not obtained a judgment under subsection (b) solely because the nonpaying party has filed for bankruptcy protection may be entitled to payment from the fund if the secondary contractor satisfies the requirements of this chapter and those established by the attorney general under IC 4-6-2-1.7(6).

(d) A secondary contractor is entitled to interest at a twelve

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1 percent (12%) annual percentage rate on all payments from the  
2 fund. The interest shall be calculated from the date the payment  
3 was originally due to the date the claim is approved for payment by  
4 the attorney general.

5 (e) A court may order satisfaction of a foreclosed lien by:

6 (1) requiring payment from the homeowner; or

7 (2) ordering sale of the property subject to the lien under  
8 IC 32-28-3;

9 if the secondary contractor receives notice from the attorney  
10 general under IC 4-6-2-1.7(c).

11 (f) If the amount of money in the fund is insufficient to satisfy  
12 claims approved by the attorney general:

13 (1) the state; and

14 (2) the fund;

15 are not liable for the claims.

16 Sec. 10. (a) A payment from the fund may not exceed  
17 seventy-five thousand dollars (\$75,000) for each owner occupied  
18 residence.

19 (b) If seventy-five thousand dollars (\$75,000) is insufficient to  
20 pay all secondary contractors, the court shall order the secondary  
21 contractors to be paid in proportion to the amount due each  
22 secondary contractor.

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